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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 04 2011

IN RE: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a general surgeon. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a very general statement with little reference to the specific evidence submitted. Counsel's statement, which borders on the type of minimalist appeal that the AAO can summarily dismiss pursuant to 8 C.F.R. § 103.3(a)(v), does not overcome the director's bases for denial. Rather, for the reasons discussed below, we uphold the director's determination that the petitioner has not established his eligibility for the benefit sought.

In addition to the inadequacy of the evidence, the record raises credibility issues. First, the petition was filed on June 9, 2009. On the same date, the petitioner also filed a petition seeking classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. The director also denied that petition and the petitioner did not appeal. On October 1, 2009, two months after the director denied these petitions, the petitioner filed two new petitions seeking benefits pursuant to section 203(b)(1)(A) of the Act and section 203(b)(2) of the Act (with a national interest waiver), SRC-10-001-52562 and SRC-10-001-51950. The petitioner and counsel signed both new petitions. On both of these new petitions, which are included in the record of proceeding before us, the petitioner responded "no" to Part 4, question 6 which asks whether any immigrant visa petition has ever been filed by or on behalf of the petitioner. The petition also advises that if the answer is "yes," the petitioner must provide the case number, office location, date of decision and disposition of the decision on a separate sheet of paper. The petitioner did not submit an attachment with this information.

While there is no prohibition regarding the number of extraordinary ability and national interest waiver petitions an alien may choose to file, neither the alien nor his attorney of record is permitted to deliberately conceal the existence of prior filings in response to the specific questions at Part 4 of an I-140 petition, or to decline to provide U.S. Citizenship and Immigration Services (USCIS) with specific requested information regarding all prior filings. The Form I-140 petition "shall be executed and filed in accordance with the instructions on the form." 8 C.F.R. § 103.2(a)(1). As counsel has represented the petitioner in both of his prior Form I-140 filings, it is unclear why counsel signed the instant petition to indicate that the information on the form was "based on all information of which I have knowledge." The existence of prior petitions and the information contained within those petitions may be material to a new adjudication. *See, e.g.*, 8 C.F.R. § 103.2(b)(15) (withdrawal or denial of a petition due to abandonment shall not itself affect a new proceeding; however, the facts and

circumstances surrounding the prior petition shall otherwise be material to the new petition). The AAO notes that willfully misleading, misinforming or deceiving any person concerning any material and relevant matter relating to a case may be a basis for disciplinary sanctions under 8 C.F.R. § 1003.102(c). In addition, such actions may constitute frivolous behavior. *See* 8 C.F.R. § 1003.102(j).

With respect to the petitioner's failure to respond truthfully to the questions at Part 4 of the Form I-140, we note that the petitioner is currently in the United States as an H-1B nonimmigrant. A nonimmigrant's admission and continued stay in the United States is conditioned on the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to provide full and truthful information requested by USCIS (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act. 8 C.F.R. § 214.1(f). The AAO must express its deep concern and strongly discourage this behavior.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master of Surgery degree from Kuvempu University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The record consists of the petitioner's academic and professional credentials, a lengthy disjointed and duplicative personal statement that incorporates some elements of a curriculum vitae, PowerPoint presentations with no supporting evidence confirming where the petitioner gave these presentations and broad conclusory reference letters.

The petitioner's personal statement incorporates an article entitled "The Impending Disappearance of the General Surgeon." The inclusion of this article suggests that the request for a waiver of the alien employment certification process is based, at least in part, on a shortage of general surgeons. The assertion of a labor shortage should be tested through the alien employment certification process. *Id.* at 220. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

Counsel initially asserted that an employer seeking an alien employment certification from the Department of Labor may only include those job requirements normally required for the job. Counsel continues that these normal job requirements "fall short in consideration of the nature of [the petitioner's] work in surgery, because the factors relating to this scientific technique transcend the 'context' of any specific employer's 'business' operation." Counsel notes that "understanding and properly diagnosing and treating serious surgery disorders affect patients' well being and have intrinsic merit relating directly to the national interest." Counsel concludes:

> Establishing "business necessity" for "unduly restrictive" requirements is outside the scope of the instant petition. **As a physician, [the petitioner] is directly responsible for saving lives. Such skills cannot be measured in the context of business necessity."**

(Emphasis in original.) Counsel's assertions regarding the inapplicability of the alien employment certification process appear to relate to all physicians, all of whom diagnose and treat patients and are evaluated based on their clinical skills. There is, however, no blanket waiver for all competent physicians. We note that Congress did create a limited waiver of the alien employment certification process for physicians working in shortage areas or veterans facilities. Section 203(b)(2)(B)(ii) of the Act. The petitioner does not seek a waiver under that provision.

We concur with the director that the petitioner works in an area of intrinsic merit, general surgery. The director then concluded that the petitioner was primarily working as a physician and questioned whether the proposed benefits of this work would be national in scope. In her initial cover letter, counsel asserted that the petitioner has reached a large and distinguished audience through his publications and presentations and "frequently diagnoses and treats patients from different parts of the country on referral." Counsel further asserted that the petitioner is able to perform "such advanced procedures that only a very small percentage of his peers are able to perform." Counsel stated that the petitioner then teaches these procedures to both junior and senior peers, "creating a ripple effect that is making the performance of these procedures more widespread nationally."

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Significantly, the record does not support many of counsel's assertions. For examples, the record contains no evidence that the petitioner has ever published a single article in a journal. While he claims to be currently working on two research projects, the only written research he submits is his unpublished dissertation from 1994. The PowerPoint presentations submitted review general medical concepts, current practices and individual case outcomes. They do not appear to report the petitioner's original research. Moreover, the record contains no programs or conference proceedings demonstrating that the petitioner gave these presentations at notable medical conferences rather than in-house. Finally, as will be discussed in more detail below, the petitioner's references do not provide any examples of recent original

research. Rather, the petitioner appears to be primarily, if not entirely, a practicing surgeon rather than a medical researcher.

In addressing what benefits might be national in scope in *NYSDOT,* the AAO stated:

> [T]he analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. Significantly, Congress is presumed to be aware of existing administrative and judicial interpretation of statute when it reenacts a statute. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978). In this instance, Congress' awareness of *NYSDOT* is a matter not of presumption, but of demonstrable fact. In 1999, Congress amended section 203(b)(2) of the Act in direct response to the 1998 precedent decision. Congress, at that time, could have taken any number of actions to limit, modify, or completely reverse the precedent decision, such as by applying the waiver to all physicians or general surgeons. Instead, Congress let the decision stand, apart from a limited exception for certain physicians working in shortage areas, as described in section 203(b)(2)(B)(ii) of the Act. As stated above, while the petitioner submitted an article about a shortage of general surgeons, the petitioner does not seek a waiver under this provision. Because Congress has made no further statutory changes in the decade since *NYSDOT*, we can presume that Congress has no further objection to the precedent decision.

Applying the above reasoning quoted from *NYSDOT,* 22 I&N Dec. at 217, n.3, to the matter before us, the treatment of patients at a single hospital does not result in benefits that are discernible at the national level. Similarly, training colleagues in procedures developed by others provides benefits that are negligible at the national level. Thus, the petitioner has not demonstrated that the proposed benefits of his work will be national in scope.

Nevertheless, we will analyze whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT,* 22 I&N

Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner submitted a lengthy personal statement. In his statement, he details procedures he has performed, specific patients he has treated and roles he has had for various medical facilities. This self-serving statement is not helpful in determining the petitioner's influence in the field. More specifically, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). While the petitioner claims to have served as [redacted] the record contains no letters from someone at that hospital confirming his position. The regulation at 8 C.F.R. § 204.5(g)(1) expressly states that evidence of experience shall consist of a letter from the employer.

Counsel initially asserted that the petitioner "has had his work published in journals and presented at conferences that are national and even international." Thus, counsel concludes that the petitioner's research has had a "national, if not international impact." As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. As discussed above, the petitioner submits no articles published in journals or conference proceedings. Rather, the petitioner submitted several PowerPoint presentations, many as short as two pages. The record contains no evidence that the petitioner presented this work at "conferences that are national and even international" as claimed by counsel. Specifically, the record contains no conference programs or articles by the petitioner in conference proceedings.

Even if the petitioner had published or presented his work, that would only demonstrate its dissemination. The petitioner cannot demonstrate his influence in the field through publication and presentations alone. Rather, the petitioner must demonstrate the application or use of his work in the field through citations, testimonials or similar evidence.

While the petitioner claims to have held "leading" roles with various medical facilities, the record does not support this assertion. Specifically, the petitioner claimed to have been a [redacted]

[redacted] As stated above, however, the record contains no evidence confirming his employment at that hospital. The petitioner further claimed to have been a [redacted] The employment verification from [redacted] states that the petitioner worked there as a [redacted]' from July 1, 2004 and June 30, 2005. The record does not establish that residencies are other than specialty training positions. On the Form ETA 750B, the petitioner listed his position with Howard University Hospital as a residency. On his curriculum vitae, he indicated that he held a [redacted] staff position." [redacted] asserts that the petitioner holds a surgical house staff position and that the position "is highly sought-after" by surgeons from around the world. [redacted] does not explain how many surgical house staff positions exist at the hospital or how they fit within the general hierarchy of the hospital. Ultimately, the record lacks evidence that the petitioner's role at any medical facility is indicative of his influence in the field beyond that institution.

The petitioner lists several medical society memberships in his self-serving personal statement. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California,* I&N Dec. at 190). [redacted] an associate professor at Howard University Hospital, asserts that the petitioner is a member of the American College of Surgeons (ACS) and the Society of American Gastrointestinal Endoscopic Surgeons (SAGES). [redacted] asserts that these societies have "extremely stringent standards for membership." The petitioner, however, did not submit primary evidence of his membership from the societies themselves or primary evidence of their membership requirements in the form of their bylaws or constitution. The petitioner must submit primary or secondary evidence instead of affidavits unless the petitioner documents that primary evidence is either unavailable or does not exist. 8 C.F.R. § 103.2(b)(2)(i). The petitioner has not documented that primary evidence of his membership is unavailable or does not exist pursuant to 8 C.F.R. § 103.2(b)(2)(ii) Moreover, [redacted] letter does not meet the requirements of an affidavit set forth at 8 C.F.R. § 103.2(b)(2)(i), which requires two affidavits.

The only membership documented in the record is the petitioner's membership in the American Medical Association (AMA). Professional memberships are one type of evidence that may be used to establish exceptional ability. Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on the degree of experience required for the profession, while relevant, are not dispositive to the matter at hand. *NYSDOT,* 22 I&N Dec. at 222. The record contains no evidence that AMA membership is limited to those who have influenced the field or is otherwise indicative of the petitioner's influence in the field.

The petitioner also submitted evidence of his salary. A salary indicative of exceptional ability is another type of evidence that may be used to establish exceptional ability. Once again, exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement. Thus, arguments hinging on the degree of experience required for the profession, while relevant, are not

dispositive to the matter at hand. *Id.* at 222. Moreover, the petitioner did not submit evidence of comparable general surgeon salaries such that his salary is meaningful evidence.

The record also contains what counsel characterizes as "job offers." This evidence actually consists of promotional materials soliciting job applications. The record contains no evidence that these employers actually offered the petitioner employment. Regardless, the petitioner's ability to secure employment in his field is not evidence that the alien employment certification process should be waived. We reiterate that any shortage of general surgeons is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner also submitted evidence of coursework he has completed and evidence that the American Heart Association (AHA) has certified him as an Advanced Cardiovascular Life Support Program and a Healthcare Provider. The certification cards reveal that the AHA certified the petitioner based on cognitive and skills evaluations in accordance with AHA curriculum. The record does not contain evidence that these certifications are unique among general surgeons. Ultimately, the record lacks evidence that these certifications are indicative of the petitioner's influence in the field rather than his competence in the programs for which he obtained certification.

The remaining evidence consists of reference letters. [redacted] states:

> [The petitioner] is a researcher who was a crucial author for well-known surgical studies on such important topics as intestinal obstruction removal, managing [redacted] with surgery and cholecystectomy type comparisons. All topics of great interest to the surgical community and its patients, who stand to benefit from the practical applications of his findings. Today, [the petitioner] has focused his research on penetrating abdominal trauma and gastric bypass quality in super morbidly-obese patients. Only the best physicians are able to conduct studies on such a wide variety of subjects.

The petitioner conducted his research on intestinal obstruction removal for his dissertation in 1994. As stated above, the petitioner did not publish this research. The record contains no evidence that the petitioner is the author of any published research or that he presented his work at an external conference. Any unpublished research that the petitioner is currently undertaking cannot serve as evidence that he had already influenced the field as of the date of filing, the date as of which the petitioner must establish his eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

[redacted] further asserts that the petitioner serves in a "highly sought-after position" for which he was hired based on his "amazing clinical abilities as well as his talent in passing on those abilities to others through his teaching skills." [redacted] further states that the petitioner is part of the faculty where he "has taught minimal access surgery, hernia skills needed by surgeons in the twenty-first century." Once again, the record does not suggest that the petitioner is responsible for any new technique or other innovation or that he is sought after outside Howard University Hospital to train

surgeons around the country. Merely training surgeons [redacted] who may move to a new location is insufficient evidence of other than a purely local impact. *NYSDOT,* 22 I&N Dec. at 217, n. 3.

Finally, [redacted] discusses the petitioner's talent as a practicing surgeon. Once again, the impact of a practicing surgeon is negligible at the national level, even at hospitals that may receive patients from outside their local area. [redacted] does not suggest that the petitioner has impacted the practice of general surgery beyond the institutions where he has worked. We reiterate that there is no blanket waiver for skilled physicians, surgeons or any one medical specialty.

[redacted] discusses the impending shortage of general surgeons in the United States. As stated above, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. The record contains no evidence that the alien employment certification process cannot address any local or national shortage of physicians.

[redacted] further asserts that the petitioner is one of the few surgeons able to treat injuries using laparoscopic surgical procedures. [redacted] an assistant professor of surgery [redacted] also asserts that the petitioner has instructed "senior house staff surgical officers in advanced laparoscopic surgical procedures." [redacted] does not profess any first hand knowledge that the petitioner provided such instruction to "senior" officers. Neither [redacted] cite any statistics or report confirming this alleged incompetency in laparoscopic techniques among the nation's general surgeons.

The record contains no news articles or other media confirming that [redacted] is one of the rare hospitals with a general surgeon trained in the latest laparoscopy procedures. The petitioner has not published any articles or book chapters or presented any papers at external conferences on laparoscopy. A review of the PowerPoint presentations submitted reveals that none of them are instructions on laparoscopy technique. The only presentation to even mention laparoscopy is a patient study that states: "Proceeded to do a Laparoscopic cecal resection – no complications."

[redacted] an assistant professor at the University of Nebraska Medical Center, asserts that the petitioner has improved several laparoscopic techniques. [redacted] further asserts that he personally has benefitted "from several techniques that he has improved upon through his extensive, tireless, and innovative research work." [redacted] does not explain how he became aware of the petitioner or his improved techniques as the petitioner has never published or presented any work.

[redacted] an associate professor of surgery [redacted] states that he does not know the petitioner personally and is basing his letter on a review of the petitioner's curriculum vitae. [redacted] does not suggest he had ever heard of the petitioner prior to being requested to provide a reference letter. [redacted] praises the petitioner's "leading roles" for "the world's foremost medical institutions that select only the most distinguished physicians for such responsibilities." [redacted] does not profess any first hand knowledge of the roles the petitioner has

held, but appears to basing his conclusions on the petitioner's self-serving curriculum vitae. Regardless, the waiver of the alien employment certification process is not a blanket waiver for anyone working for a distinguished employer. [redacted] also praises the number of procedures the petitioner performed in his eight years in Jamaica. Once again, [redacted] professes no first hand knowledge of this number. Regardless, [redacted] does not explain how these procedures have influenced the field as a whole.

The final letter from [redacted] an attending surgeon [redacted] provides similar assertions as those addressed above.

Ultimately, the petitioner is a general surgeon who has not published any articles or presented his work at any significant conference. The petitioner has not even established that he has completed his resident training in surgery. The record does not support the claims regarding the petitioner's unique abilities in laparoscopy. Regardless, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.